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UNCLAS ROME 001226

SIPDIS

DEPT PASS USTR FOR SCHAGRIN; EB/CIP - TFINTON; COMMERCE FOR  
NTIA SPECK

E.O. 12958: N/A

TAGS: [ECPS](#) [ETRD](#) [IT](#) [EUN](#)

SUBJECT: ITALY: SECTION 1377 REVIEW OF TELECOMMUNICATIONS  
AGREEMENTS - ADDITIONAL INFORMATION

REF: A. ROME 119

[1](#)B. SECSTATE 50683

[1](#)1. IN RESPONSE TO QUESTIONS POSED IN REFTEL B, POST RECEIVED  
THE FOLLOWING WRITTEN COMMUNICATION FROM THE COMMUNICATIONS  
AUTHORITY (ITALY'S EQUIVALENT OF THE FCC):

[1](#)2. QUESTION: HOW DOES ITALY DEFINE "SIGNIFICANT MARKET POWER"  
IN TELECOMMUNICATIONS AND HOW DOES THIS RELATE TO ITS  
REGULATORY COMMITMENTS UNDER THE WTO?

[1](#)3. RESPONSE: ITALY APPLIES THE CONCEPT OF "SIGNIFICANT MARKET  
POWER" (SMP) AS DEFINED BY EUROPEAN COMMUNITY LAW, AND THUS,  
ITALY COMPLIES WITH ITS REGULATORY COMMITMENTS UNDER THE WTO.  
AS THE USG IS AWARE, A NEW REGULATORY FRAMEWORK (NRF) FOR  
TELECOMMUNICATIONS WILL ENTER INTO FORCE IN JULY 2003.

UNDER THE 1998 REGULATORY PACKAGE, AN OPERATOR IS PRESUMED TO  
HAVE SMP WHEN ITS MARKETS SHARE EXCEEDS 25 PERCENT. MARKET  
SHARE ALONE IS, HOWEVER, NEITHER A NECESSARY NOR A SUFFICIENT  
CONDITION FOR AN SMP FINDING. EUROPEAN LAW REQUIRES THAT  
OTHER FACTORS BE TAKEN INTO ACCOUNT, SUCH AS: THE  
ORGANIZATION'S ABILITY TO INFLUENCE MARKET CONDITIONS; ITS  
TURNOVER RELATIVE TO THE SIZE OF THE MARKET; ITS CONTROL OF  
THE MEANS OF ACCESS TO END-USERS; ITS ACCESS TO FINANCIAL  
RESOURCES AND ITS EXPERIENCE IN PROVIDING PRODUCTS AND  
SERVICES IN THE MARKET.

UNDER THE NRF, AN SMP OPERATOR IS DEFINED AS AN UNDERTAKING  
ENJOYING (INDIVIDUALLY OR JOINTLY WITHIN A CONSORTIUM, E.G.)  
A POSITION OF ECONOMIC STRENGTH AFFORDING IT THE POWER TO  
BEHAVE TO AN APPRECIABLE EXTENT INDEPENDENTLY OF COMPETITORS,  
AND ULTIMATELY, CONSUMERS. IN IMPLEMENTING SUCH A  
DEFINITION, NATIONAL REGULATORY AUTHORITIES (NRAS) ARE  
REQUIRED TO APPLY THE PRINCIPLES OF EUROPEAN COMPETITION LAW.

THE NRF EMPHASIZES THE NEED FOR SOUND ECONOMIC ANALYSIS OF  
RELEVANT MARKETS UNDER A CASE-BY-CASE APPROACH, USING  
EUROPEAN ANTI-TRUST JURISPRUDENCE - WHERE APPLICABLE TO  
EX-ANTE REGULATION - AS A BLUEPRINT FOR ACTION. WE BELIEVE  
THAT ITALY IS ALREADY IMPLEMENTING THIS NEW APPROACH WITHIN  
THE CONSTRAINTS OF THE OLD REGIME (SEE ALSO NEXT ANSWER) WITH  
A VIEW TO IMPROVING MARKET PERFORMANCE AND INCREASING  
CONSUMERS' WELFARE, AND IN DOING SO, FULLY COMPLYING WITH ITS  
WTO OBLIGATIONS.

[1](#)4. QUESTION: SINCE ITALIAN MOBILE OPERATORS DISCRIMINATE BY  
CHARGING OTHER MOBILE OPERATORS LESS THAN WHAT THEY CHARGE  
FIXED LINE OPERATORS FOR WHAT APPEARS TO BE A LIKE SERVICE OF  
TERMINATION, IS THAT THE GOI/THE COMMUNICATIONS AUTHORITY  
CONCERNED THAT THERE MIGHT BE INCONSISTENCY WITH ITALY'S  
NON-DISCRIMINATION OBLIGATION UNDER THE GATT'S  
TELECOMMUNICATIONS ANNEX?

[1](#)5. RESPONSE: WE DO AGREE THAT REGULATION OF MOBILE  
TERMINATION IS A VERY PRESSING ISSUE, ONE IN WHICH THE NRF  
CAN HELP BRING ABOUT NEW AND BETTER REGULATION FROM THE  
OPERATORS' AND, ULTIMATELY, THE CONSUMERS' POINT OF VIEW. AS  
YOU ARE AWARE, AFTER A LONG DEBATE, THE EUROPEAN COMMISSION  
DECIDED TO IDENTIFY A SEPARATE RELEVANT MOBILE TERMINATION  
FOR EACH OPERATOR, AND REQUIRE NRAS TO ANALYZE IF MARKET  
CONDITIONS ARE SUCH THAT OPERATORS ARE ABLE TO REAP  
EXTRA-PROFITS IN PROVIDING THESE SERVICES. THIS UNDOUBTEDLY  
REPRESENTS A STEP FORWARD IN THE REGULATION OF THESE MARKETS  
AS COMPARED TO THE OLD REGIME, WHERE, FOR A START,  
TERMINATION MARKETS COULD BE CONSIDERED AS PART OF THE LARGER  
INTERCONNECTION MARKET, WHICH COVERED BOTH MOBILE AND FIXED  
MARKETS.

WHILE WE CANNOT, AT THIS MOMENT, ANTICIPATE TO WHAT EXTENT  
THE CURRENT REGULATION OF FIXED-TO-MOBILE AND  
MOBILE-TO-MOBILE TERMINATION WILL CHANGE UNDER THE NRF, WE  
COULD NOT RULE OUT SOME FORM OF ASYMMETRY BETWEEN THE TWO  
TYPES OF SERVICES. IN FACT, WHILE THERE IS SOME COMPETITIVE  
DISCIPLINE IN THE MOBILE-TO-MOBILE AVERAGE RETAIL TERMINATION  
RATES, SINCE OPERATORS ARE COMPETING WITH ONE ANOTHER TO  
ATTRACT CUSTOMERS, THIS IS NOT THE CASE WHEN THE TWO NETWORKS  
ARE NOT CLOSE SUBSTITUTES (AS FIXED AND MOBILE NETWORKS ARE,  
AT LEAST UNDER CURRENT TECHNOLOGY AND DEMAND CONDITIONS).

16. END WRITTEN COMMUNICATION FROM THE COMMUNICATIONS  
AUTHORITY.  
SEMBLER

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